(3) Vehicles excluded under § 86.1801.

(4) For model year 2017, do not include vehicle sales in California or the section 177 states for calculating the fleet average value for evaporative emissions.

(d) Except as specified in paragraph (e) of this section, your calculated fleet-average value may not exceed the corresponding fleet-average standard for the model year.

(e) You may generate or use emission credits related to your calculated fleet-average value as follows:

(1) You may generate emission credits as described in § 86.1861 if your fleet-average value is below the corresponding fleet-average standard.

(2) You may use emission credits as described in § 86.1861 if your fleet-average value is above the corresponding fleet-average standard. Except as specified in paragraph (e)(3) of this section, you must use enough credits for each model year to show that your adjusted fleet average value does not exceed the fleet-average standard.

(3) The following provisions apply if you do not have enough emission credits to demonstrate compliance with a fleet-average standard in a given model year:

(i) You may have a credit deficit for up to three model years within an averaging set under § 86.1861–17(c). You may not bank emission credits with respect to a given emission standard during a model year in which you have a credit deficit in the same averaging set. If you fail to meet the fleet-average standard for four consecutive model years, the vehicles causing you to exceed the fleet-average standard will be considered not covered by the certificate of conformity. You will be subject to penalties on an individual-vehicle basis for sale of vehicles not covered by a certificate of conformity.

(ii) You must notify us in writing how you plan to eliminate the credit deficit within the specified time frame. If we determine that your plan is unreasonable or unrealistic, we may deny an application for certification for a test group or evaporative family if its bin standard or FEL would increase your credit deficit. We may determine that your plan is unreasonable or unrealistic based on a consideration of past and projected use of specific technologies, the historical sales mix of your vehicle models, your commitment to limit sales of higher-emission vehicles, and expected access to traded credits. We may also consider your plan unreasonable if your fleet-average emission level increases relative to the first model year of a credit deficit or any later model year. We may require that you send us interim reports describing your progress toward resolving your credit deficit over the course of a model year.

(f) If the applicable bin standards and FELs for all your vehicle models are at or below a corresponding fleet-average standard for a given model year, and you do not want to generate emission credits, you may omit the calculations described in this section.

(g) For purposes of calculating the statute of limitations, the following actions are all considered to occur at the expiration of the deadline for offsetting a deficit as specified in paragraph (e)(3) of this section:

(1) Failing to meet the requirements of paragraph (e)(3) of this section.

(2) Failing to satisfy the conditions upon which a certificate was issued relative to offsetting a deficit.

(3) Selling, offering for sale, introducing or delivering into U.S. commerce, or importing vehicles that are found not to be covered by a certificate as a result of failing to offset a deficit.

[79 FR 23735, Apr. 28, 2014]

§ 86.1861–04 How do the Tier 2 and interim non-Tier 2 NO_X averaging, banking and trading programs work?

(a) *General provisions for Tier 2 credits and debits.* (1) A manufacturer whose Tier 2 fleet average NO_X emissions exceeds the 0.07 g/mile standard must complete the calculation at paragraph (b) of this section to determine the size of its NO_X credit deficit. A manufacturer whose Tier 2 fleet average NO_X emissions is less than or equal to the 0.07 g/mile standard must complete the calculation in paragraph (b) of this section if it desires to generate NO_X credits. In either case, the number of credits or debits determined in the calculation at paragraph (b) of this section must be rounded to the nearest whole number.

(2) Credits generated according to the calculation in paragraph (b)(1) of this section may be banked for future use or traded to another manufacturer.

(3) NO_X credits are not subject to any discount or expiration date except as required under the deficit carryforward provisions of § 86.1860–04(e)(2).

(4) If a manufacturer calculates that it has negative credits (debits or a credit deficit) for a given model year, it must obtain sufficient credits, as required under § 86.1860–04(e)(2), from vehicles produced by itself or another manufacturer in a model year no later than the third model year following the model year for which it calculated the credit deficit. (Example: if a manufacturer calculates that it has a NO_X credit deficit for the 2008 model year, it must obtain sufficient NO_X credits to offset that deficit from its own production or that of other manufacturers' 2011 or earlier model year vehicles.)

(6)(i) Manufacturers may not use NO_X credits to comply with the NLEV requirements of subpart R of this part.

(ii) Manufacturers may not use NMOG credits generated by vehicles certified to the NLEV requirements of subpart R of this part to comply with any NO_X requirements of this subpart.

(iii) Manufacturers may not use NO_X credits generated by interim non-Tier 2 vehicles to comply with the fleet average NO_X standard for Tier 2 vehicles.

(iv) Manufacturers may not use NO_X credits generated by Tier 2 vehicles to comply with any fleet average NO_X standard for interim non-Tier 2 vehicles, except as permitted under § 86.1860–04(e).

(v) Manufacturers may not use NO_X credits generated by interim non-Tier 2 LDV/LLDTs to comply with the fleet average NO_X standard for interim non-Tier 2 HLDT/MDPVs.

(vi) Manufacturers may not use NO_X credits generated by interim non-Tier 2 HLDT/MDPVs to comply with the fleet average NO_X standard for interim non-Tier 2 LDV/LLDTs.

(vii) Manufacturers may not use NO_X credits generated by Tier 2 LDV/LLDTs to comply with the Tier 2 NO_X average standard for HLDT/MDPVs before the 2009 model year.

(viii) Manufacturers may not use NO_X credits generated by Tier 2 HLDT/MDPVs to comply with the Tier 2 NO_X average standard for LDV/LLDTs before the 2009 model year.

(7) Manufacturers may bank Tier 2 NO_X credits for later use to meet the Tier 2 fleet average NO_X standard or trade them to another manufacturer. Credits are earned on the last day of the model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(8) There are no property rights associated with NO_X credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(b) *Calculating Tier 2 credits and debits.* (1) Manufacturers that achieve fleet average NO_X values from the calculation in § 86.1860–04(f), lower than the applicable fleet average NO_X standard, may generate credits for a given model year, in units of vehicle-g/mi NO_X, determined in this equation:

[(Fleet Average NO_X Standard) − (Manufacturer's Fleet Average NO_X Value)] × (Total Number of Tier 2 Vehicles Sold, Including ZEVs and HEVs).

Where: The number of Tier 2 vehicles sold is based on the point of first sale and does not include vehicles sold in California or a state that adopts, and has in effect for that model year, California emission requirements.

(2) Where the result of the calculation in paragraph (b)(1) of this section is a negative number, the manufacturer must generate negative NO_X credits (debits).

(c) *Early banking.* (1)(i) Manufacturers may certify LDV/LLDTs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2003 in order to bank credits for use in the 2004 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811–04.

(ii) Manufacturers may certify HLDT/MDPVs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2007 in order to bank credits for use in the 2008 and later model years. Such vehicles must also meet applicable SFTP exhaust emission standards specified in § 86.1811–04.

(iii) This process is referred to as "early banking" and the resultant credits are referred to as "early credits". In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to Tier 2 LDV/LLDTs and/or HLDT/MDPVs, as applicable, except as allowed under paragraph (c)(4) of this section.

(2) To generate early credits, a manufacturer must separately compute the sales weighted NO_X average of the LDV/LLDTs and HLDT/MDPVs it certifies to the Tier 2 exhaust requirements and separately compute credits using the calculations in this section and in § 86.1860–04.

(3) Early HLDT/MDPV credits may not be applied to LDV/LLDTs before the 2009 model year. Early LDV/LLDT credits may not be applied to HLDT/MDPVs before the 2009 model year.

(4) Manufacturers may generate early Tier 2 credits from LDVs, LDT1s and LDT2s that are certified to a full useful life of 100,000 miles, provided that the credits are prorated by a multiplicative factor of 0.833 (the quotient of 100,000/120,000). Where a manufacturer has both 100,000 and 120,000 mile full useful life vehicles for which it desires to bank early credits, it must compute the credits from each group of vehicles separately and then add them together.

(5) Manufacturers may bank early credits for later use to meet the Tier 2 fleet average NO_X standard or trade them to another manufacturer subject to the restriction in paragraph (c)(3) of this section.

(6) Early credits must not be used to comply with the fleet average NO_X standards for interim non-Tier 2 vehicles.

(7) Nothing in this section prevents the use of the NMOG values of 2003 and earlier model year LDV/LLDTs from being used in calculations of the NMOG fleet average and subsequent NMOG credit generation, under subpart R of this part.

(d) *Reporting and recordkeeping for Tier 2 NO_X credits including early credits.* Each manufacturer must comply with the reporting and recordkeeping requirements of § 86.1862–04.

(e) *Fleet average NO_X debits.* (1) Manufacturers must offset any debits for a given model year by the fleet average NO_X reporting deadline for the third model year following the model year in which the debits were generated as required in § 86.1860.04(e)(2). Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section and of this paragraph (e), within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying vehicles not covered by the certificate must be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average NO_X standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average NO_X standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the vehicles for which the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest certification NO_X emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(3) If a manufacturer ceases production of LDV/Ts and MDPVs or is purchased by, merges with or otherwise combines with another manufacturer,

the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (e)(1) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraph (e)(2) of this section.

(4) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (e)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (e)(1) of this section.

(f) *NO_X credit transfers.* (1) EPA may reject NO_X credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (a)(2) and (a)(7) of this section.

(3) In the event of a negative credit balance resulting from a transaction, both the buyer and seller are liable, except in cases involving fraud. EPA may void *ab initio* the certificates of conformity of all engine families participating in such a trade.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (e) of this section.

(g) *Interim non-Tier 2 NO_X credits and debits; Interim non-Tier 2 averaging, banking and trading.* Interim non-Tier 2 NO_X credits must be generated, calculated, tracked, averaged, banked, traded, accounted for and reported upon separately from Tier 2 credits. The provisions of this section applicable to Tier 2 NO_X credits and debits and Tier 2 averaging banking and trading are applicable to interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDT/MDPVs with the following exceptions:

(1) Provisions for early banking under paragraph (c) of this section do not apply.

(2) The fleet average NO_X standard used for calculating credits is 0.30 grams per mile for interim non-Tier 2 LDV/LLDTs and 0.20 g/mi for interim non-Tier 2 HLDT/MDPVs. (The interim non-Tier 2 NO_X standard of 0.30 (or 0.20) g/mi replaces 0.07 in the text and calculation in this section.)

(3) Interim non-Tier 2 NO_X credit deficits may be carried forward for three years subject to the requirements of § 86.1860–04(e).

[65 FR 6868, Feb. 10, 2000, as amended at 66 FR 19311, Apr. 13, 2001]

§ 86.1861–17 How do the NMOG+NO_X and evaporative emission credit programs work?

You may use emission credits for purposes of certification to show compliance with the applicable fleet-average NMOG+NO_X standards from §§ 86.1811 and 86.1816 and the fleet-average evaporative emission standards from § 86.1813 as described in 40 CFR part 1037, subpart H, with certain exceptions and clarifications as specified in this section. MDPVs are subject to the same provisions of this section that apply to LDT4.

(a) Calculate emission credits as described in this paragraph (a) instead of using the provisions of 40 CFR 1037.705. Calculate positive or negative emission credits relative to the applicable fleet-average standard. Calculate positive emission credits if your fleet-average level is below the standard. Calculate negative emission credits if your fleet-average value is above the standard. Calculate credits separately for each type of standard and for each averaging set. Calculate emission credits using the following equation, rounded to the nearest whole number:

Emission credit = Volume[Fleet average standard—Fleet average value]

Where: